

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1011 of 1999

in

SPECIAL CIVIL APPLICATION No 2448 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CS AMIN

OFFICER J.M.G-1

Versus

DISCIPLINARY AUTHORITY AND DY GENERAL MANAGER

Appearance:

MR KB PUJARA for Appellant

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 28/07/1999

ORAL JUDGEMENT (PER : C.K.THAKKAR, J)

This appeal is filed against summary dismissal of
Special Civil Application No. 2448 of 1999 dated 22nd
June, 1999 by the learned Single Judge.

The appellant was the original petitioner. He was serving with State Bank of India- respondent no.2. A chargesheet was issued to him on 6th January, 1998 for alleged incident which took place on 3rd March, 1993. Departmental inquiry was instituted and it was over. Before an order of punishment could be passed against him, he approached this Court by filing the above petition for an appropriate writ, direction or order restraining the respondents from implementing, operating and/or executing any order of penalty which was likely to be passed against him. In the alternative, a prayer was made that if any order of punishment would be passed against the petitioner, the same may not be implemented for some time so as to enable the petitioner to approach appellate forum. It was stated that the petitioner was prepared to file an appeal within the stipulated period and if for the limited period interim order would be passed protecting him, it would serve the ends of justice.

Learned Single Judge was of the view that such a petition would not be maintainable. In the light of the above query, the learned counsel for the petitioner relied upon certain orders passed by this Court in which before taking punitive action, the petitioners have approached this Court and interim protection was granted to them for a limited period. Learned Single Judge, however, did not think it fit to entertain the petition and it was dismissed without issuing notice to the respondent. While dismissing the petition, the learned Single Judge observed in para-14 that the petition was misconceived, frivolous and there was an attempt on the part of the petitioner to abuse the process of court. The petitioner was, therefore, directed to pay costs of the petition which was quantified at Rs.5000/-. Branch Manager of the State Bank of India, Vithal Udhyognagar, Anand was directed to deduct the said amount from the salary of the petitioner "forthwith" and deposit the said amount in Chief Minister's Relief Fund and the receipt of the deposit of the said amount was to be produced in the proceedings of Special Civil Application No. 2448 of 1999. The learned counsel for the appellant stated that before the order came to be pronounced on 22nd June, 1999, the appellant was already dismissed from service in the month of May, 1999.

In the facts and circumstances of the case, in our opinion, it cannot be said that any error of law and/or of jurisdiction can be said to have been committed by the learned Single Judge in not entertaining the petition at that stage. Ordinarily, a court would not entertain a petition before a punitive action is taken. There may, however, be exceptional circumstances in which

in exercise of powers under Article 226 of the Constitution, the Court may think fit to grant prayer of a limited nature. If in the facts and circumstances of the case, the court was of the view that this was not a fit case to grant extraordinary relief in exercise of powers under Article 226 of the Constitution, petition could have well been dismissed on the ground that it was premature.

But when the petitioner has come with all facts and has stated that after departmental inquiry was over an order of punishment was likely to be passed and that he had prayed for some relief relying on certain orders passed by this Court, in our opinion, it was not a fit case to direct the petitioner to pay costs of Rs.5000/-. Since the learned Single Judge did not enter into merits of the matter and in our opinion, at that stage rightly, it would have been proper if the petition could have been dismissed only on the ground that it was premature without awarding costs.

For the foregoing reasons, in our opinion, Letters Patent Appeal deserves to be partly allowed. Ordinarily, we would have issued notice of admission and final hearing before making this order, but in view of the fact that on merits, we are upholding the order passed by the learned Single Judge and are not disturbing that part of the order and interfering with payment of cost which is again not directed to be paid to the respondent. In our opinion, therefore, notice to the other side is not necessary, more particularly, when no notice was issued by the learned Single Judge in Special Civil Application.

In view of above reasons, observations made by the learned Single Judge also will not survive.

Letters Patent Appeal is accordingly partly allowed. No costs.

28.07.1999 [C.K. THAKKAR, J]

[C.K. BUCH, J]

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